IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 392 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BALUBHAI ARJANBHAI

Appearance:

MS SIDDHI TALATI AGP for appellant

MR JD AJMERA for Respondent

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 27/07/2000

ORAL JUDGEMENT

1. This appeal filed under Section 100 of the Civil Procedure Code ('the Code' for short hereinafter) questions legality, validity and propriety of the judgment and decree dated January 30, 1980 rendered by learned District Judge, Amreli in Regular Civil Appeal

No. 58 of 1977 by which judgment and decree dated April 11, 1977 declaring the orders under challenge were illegal and void recorded in Regular Civil Suit No. 234 of 1975 by the learned Civil Judge (S.D.), Amreli was confirmed and maintained by dismissing the appeal.

2. The suit in question was filed by the respondent for the relief of declaration that the orders exh. Nos. 35, 27, 36, 37, 38, 39 and 30 relating to departmental inquiry were null and void since same were made against the rule of natural justice and contrary to the rules of departmental inquiry and also for further consequential relief of mandatory injunction to reinstate him in service and give him arrears of pay, increments, promotions and also other benefits.

3. The appellant was the original defendant whereas the respondent was the original plaintiff and for the sake of convenience and brevity they shall be referred to as plaintiff and defendant in this judgment.

4. The facts giving rise to the present appeal runs in a narrow compass and as per the averments made in the plaint they are as under:

4.1. The plaintiff, a member of police force and during the relevant time working as an unarmed police constable at Dhari, District Amreli, was charge-sheeted on the basis of a news item under the heading of "Rape at Dhari" published on January 19, 1972 in "Phool Chhab", a daily newspaper published from Rajkot. As per the said news item, on January 13, 1972, a police constable had entered into the house situated at Navi Vasahat and committed rape upon a woman who was also beaten up by the people who assembled there. On the basis of the aforesaid news item, a confidential inquiry was held by Shri Parghi, Police Sub Inspector, at the instance of the District Superintendent of Police, Amreli. The PSI recorded statements of certain persons and submitted his report to the DSP and on the basis thereof DSP Amreli gave charge-sheet against the plaintiff. The accusation against him was to the effect that on January 13, 1972 at about 3 P.M. he was found in a suspicious condition with Bai Khatija, a married woman, wife of one Ismail Maherali, in the house of one Suthar Haribhai Vashram, situated in Navi Vasahat at Dhari. The Deputy Superintendent of Police was appointed as inquiry officer who concluded inquiry and at the conclusion thereof the plaintiff was found to be not guilty of the charge levelled against him. He, therefore, submitted the report accordingly. The DSP however, did not agree with

the finding arrived at by the inquiry officer, and recorded contrary finding by order dated May 25, 1972 and found him guilty and issued notice against him to show cause why he should not be dismissed from service. The DSP after hearing the plaintiff vide order dated July 7, 1972 ordered to remove the plaintiff from the service.

4.2. Aggrieved thereby the plaintiff preferred appeal before the DIGP which was also dismissed by order dated October 21, 1972. The matter was carried in revision before the Inspector General of Police which also met with the same fate vide order dated April 23, 1973. Thereafter the plaintiff also preferred revision application before the Government. The Government found that the order recorded against the plaintiff was not a speaking order. The Government while dismissing the revision remanded the matter asking the IGP to record a speaking order. Thereupon the IGP recorded his speaking order on January 1, 1974 and dismissed the revision filed by the plaintiff. The matter was again carried before the Government by way of revision application which also met with the same fate. Ultimately it was dismissed by the Government vide order dated September 10, 1974. In short, the finding recorded by the disciplinary authority holding the plaintiff guilty of the charge levelled against him and imposition of penalty of removal from service against the plaintiff was confirmed throughout.

4.3. The plaintiff gave notice dated September 8, 1975 to the Government as well as to all the police personnel under section 80 of the Code for bringing a suit against them and then instituted the suit challenging all the orders recorded against him. In the said suit he made voluminous grievances against the disciplinary authority - DSP including allegations made against him were false, thee lady in respect of whom the aforesaid news item was published was never examined by the inquiry officer, the witnesses who had deposed against him were inimical towards him, the reasons assigned by the DSP for holding him guilty were also unjustifiable since the DSP has taken extraneous factors into consideration and his analysis of the entire evidence was perverse. He could not avail opportunity of cross-examination of witnesses on account of his ignorance of law since he was not permitted to have friend to conduct the inquiry on his behalf and the appreciation of the evidence done by the DSP was violative of principles of natural justice and lastly the approach of the DSP towards the evidence was absolutely unreasonable in so far as he wanted the plaintiff to prove his innocence. In the aforesaid premises, he challenged the inquiry itself and result

thereof including the punishment imposed upon him and prayed for relief to which reference is made in earlier paragraphs of this judgment.

4.4. Though the defendant had appeared through advocate, it had chosen not to file written statement. However, they contested the suit mainly on two grounds i.e., (i) the inquiry was conducted in accordance with law by adhering to the principles of natural justice and giving full opportunity to the plaintiff and (ii) the suit was barred by law of limitation.

4.5. The learned trial Judge after framing issues, recorded the evidence and on appreciation and evaluation thereof and submissions advanced at the bar by the learned advocates appearing for the parties, came to the conclusion that the order dated July 7, 1972 removing the plaintiff from service was illegal, null and void, perverse and against the principles of natural justice much less the subsequent orders recorded by the appellate authority and the revisional authority so also the Government were also illegal, void and not binding to the plaintiff and resultantly he held that the plaintiff was entitled to the reliefs as claimed for in the plaint and in the net result he recorded the decree vide judgment dated April 11, 1977.

4.6. Feeling aggrieved thereby the defendant - State of Gujarat went in appeal before the District Court, Amreli. The learned District Judge, on reappreciation and reevaluation of the evidence, dismissed the appeal by confirming the judgment and decree and observed that the order dated July 7, 1972 recorded in the departmental inquiry by the DSP was illegal, null and void, perverse, against the principles of natural justice and the appellate order and the revisional order as well as the order recorded by the State Government were also illegal, void and perverse. He also further held that the suit was in time and not barred by limitation.

5. It is this judgment and decree which has given rise to the present Second Appeal at the instance of the defendant and admitted by this Court on the following substantial questions of law:

"(1) Whether the lower courts were right in holding that the suit filed by the respondent was in time in view of Article 100 of the Limitation Act?

(2) Whether the lower courts were right in

law to declare the various orders passed against the respondent dismissing him from service?

(3) Whether the lower courts were right in declaring that the orders passed against the respondents were against the principles of natural justice and were illegal and bad in law?

(4) Whether the lower courts were right in law in reappreciating the evidence recorded by the lower authorities?"

6. Ms. Talati, learned A.G.P. for the defendant contended that the finding recorded by the lower appellate court qua the issue of limitation is erroneous. According to her, looking to the reliefs claimed in the suit and on the facts and in the circumstances of the case, Article 100 of the Limitation Act ('the Act' for short hereinafter) would apply because what was challenged by the plaintiff was the order passed by the disciplinary authority as confirmed by the appellate authority and the revisional order. The order of removal from service was passed by the disciplinary authority, DSP, on July 7, 1972 which was confirmed and maintained by the higher authorities and the last order was dated September 10, 1974. Therefore, according to the learned AGP, the operation of limitation would start from September 10, 1974, and after crediting notice period of two months, the suit ought to have been filed on or before November 10, 1975, that is, within a period of one year as prescribed under Article 100 of the Act. As admittedly the suit was filed on December 4, 1975, indisputably the suit was time barred. It was also stressed by the learned AGP that the learned lower wappellate Judge has misread the provisions of Article 100 of the Act and concluded that on the facts and in the circumstances of the case, residuary Article 113 of the Act would apply. It was also erroneously held by the learned lower appellate Judge that assuming that Article 58 which deals with suits to obtain any other declaration would apply in that case also the suit was not within the limitation as per both the Articles period of limitation for filing the suit was three years. It was also emphatically contended by the learned AGP that the order passed by the disciplinary authority cannot be said to be without jurisdiction or was a nullity or non-est in the eye of law in view of the finding recorded by the lower appellate court that full opportunity was given and there was no other irregularity or illegality in the

proceedings taken out by the disciplinary authority. It was also maintained by the learned AGP that the Civil Court could not have sat in appeal over the order of the disciplinary authority as if it had the authority to examine the merits of the charges levelled against the plaintiff and as if it had the power to reappreciate the evidence recorded in the disciplinary proceedings. It was also pointed out by the learned AGP that Rule 3 of the Conduct Rules envisages a conduct which is not befitting a police officer and on true interpretation even the conduct outside the duty hours can form a misconduct under the Conduct Rules. Therefore, finding of the lower appellate court that the misconduct alleged had no reasonable nexus with the official function of the Government servant, is perverse. It was also contended by the learned AGP that the lower appellate Judge had in fact reappreciated and reevaluated the evidence recorded in the departmental inquiry and sat in appeal over the judgment and order of the disciplinary authority even though the jurisdiction of civil court was very limited. On the aforesaid premises it was urged by the learned AGP that there was substantial error of law in substituting its own views in place of the findings and order of the disciplinary authority, was not permissible to civil court and, therefore, the substantial questions of law upon which this appeal was admitted are required to be answered in favour of the defendant and accordingly the judgment and decree recorded by the trial court and confirmed by the lower appellate court is required to be quashed and set aside by allowing this appeal and thereby dismissing the suit filed by the plaintiff.

7. Mr. Ajmera, learned advocate for the plaintiff, in counter submission, with all vehemence at his command contended that in the facts and circumstances of the case Article 100 of the Act can never be attracted since it is relating to suit filed after an adverse order under a Special Act. So far as the relief claimed in the suit is concerned, it is relating to declaration of an order of dismissal of an employee from the service which is governed by residuary Article 113 of the Act wherein the period of limitation prescribed is three years from the date of accrual of the cause of action. Therefore, admittedly the suit was filed within the period of limitation. While attacking the finding recorded by the lower appellate court with respect to no other irregularity or illegality in the proceedings taken place by DSP in the departmental proceeding and, therefore, the principles of natural justice were not violated, it was pointed out by learned advocate that there was no evidence worth consideration by the disciplinary

authority and there was no material on record on which the disciplinary authority could have recorded contrary finding than the one recorded by the inquiry officer. What was stressed by the learned advocate was that the inquiry officer on appreciation and evaluation of the evidence of the witnesses came to the conclusion that witnesses were not consistent in their say and hence no reliance could be placed upon their evidence and in the absence of evidence of Bai Khatija the charge levelled against the plaintiff could not be proved. Notwithstanding this fact the disciplinary authority misread the evidence and on extraneous consideration without affording him an opportunity to have say in that regard recorded the conclusion that the plaintiff was guilty of the charge levelled against him. What was emphasized by the learned advocate was that before recording contrary finding the disciplinary authority ought to have heard the plaintiff. That both the courts below have not considered the aspect that the latest law on that point requires to hear the delinquent before recording contrary finding. It was also maintained by the learned advocate that the disciplinary authority had while recording conclusion that the guilt is proved, considered extraneous material and insisted for proof of innocence upon the delinquent which is against the basic principles of departmental inquiry. Lastly it was contended that since the suit was within time, Article 113 would govern the suit and the finding recorded by both the courts below whereby it was held that all the orders recorded against the plaintiff including the final order were based on no evidence or based on perverse approach and, therefore, same are liable to be vitiated and since the said findings are the findings of fact, cannot be assailed in this Second Appeal. It was also maintained by him that there is no question of law much less substantial question of law required to be decided and answered in favour of the defendant by this Court. He, therefore, urged that the appeal being devoid of any merits requires to be dismissed by this Court.

8. I shall now deal with the first substantial question of law formulated by this Court which is with regard to the question of limitation in filing the suit. According to the plaintiff, Article 113 of the Act is applicable to the facts of the present case, since the plaintiff has sought for declaration of the impugned order dated July 7, 1972 passed by the disciplinary authority and subsequent orders recorded by the appellate authority, revisional authority and the State Government are null and void whereas according to the defendant, Article 100 of the Act is applicable to the facts of the

present case. As observed in earlier paragraphs of this judgment, the plaintiff faced the departmental inquiry on the basis of a news item published in "Phool Chhab" , a daily newspaper on the accusation that he entered into a house situated at Navi Vasahat and committed rape upon a woman and the people assembled there had beaten him. An inquiry was conducted by the Deputy Superintendent of Police who found him not guilty and exonerated the plaintiff from the charge levelled against him. But the DSP being the disciplinary authority did not agree with the said finding. He, therefore, recorded his contrary finding vide order dated May 25, 1972 and held the plaintiff guilty and thereafter issued a show cause notice as to why he should not be dismissed from service. Thereafter the DSP vide order dated July 7, 1972 dismissed the plaintiff from service. The plaintiff preferred appeal before DIGP, Rajkot which was decided against the plaintiff vide order dated October 21, 1972. The matter was further carried in revision before the IGP by filing revision application who dismissed the appeal vide order dated April 23, 1973. Second Revision Application was also preferred by the plaintiff before the Government of Gujarat. The Government dismissed the revision. However, it ordered the IGP to record a speaking order and the matter was sent back to the IGP for recording speaking order. The IGP recorded speaking order dated January 1, 1974 and again dismissed the plaintiff's revision. Thereafter the matter again went to the State Government by way of a revision and the Government ultimately dismissed the revision vide order dated September 10, 1974. Thereafter the plaintiff served statutory notice dated September 8, 1975 which was served upon various police personnel and the State of Gujarat. Thereafter the suit was filed on December 4, 1975. It may be appreciated that the order dated July 7, 1972 by which the plaintiff was removed from service has been merged into the final order dated September 10, 1974 recorded by the State Government while exercising revisional power. Therefore, obviously the period of limitation would start running from September 10, 1974. The suit was filed on December 4, 1975. Therefore, admittedly the suit was filed after one year and about 3 months.

9. In the backdrop of the aforesaid factual aspects, now let us find out which Article would govern the case of the plaintiff. Ms. Talati, learned A.G.P. for the defendant placed reliance upon the judgment of the Supreme Court in the case of Ajudh Raj v. Moti, AIR 1991 SC 1600 and contended that provisions of Article 100 of the Act would apply in a suit for setting aside an

adverse order under Special Act whereas Mr. Ajmera, learned advocate for the plaintiff placed reliance on the judgment of the Supreme Court in the case of State of Punjab v. Gurdev Singh, AIR 1991 SC 2219 and contended that the suit for the declaration that the order of dismissal or termination from service passed against an employee is wrongful, illegal or ultra vires is governed by Article 113 of the Act.

10. Now on adverting to the judgment in the case of Ajudh Raj's case (supra) it is seen that the principle for deciding the question of limitation in a suit filed after an adverse order under a Special Act is well settled. If the order impugned in the suit is such that it has to be set aside before any relief could be granted to the plaintiff the provisions of Article 100 of the Act will be attracted and if no particular Article of the Act is applicable the suit must be governed by the residuary Article 113, prescribing a period of three years. Therefore, in a suit for title to an immoveable property which has been the subject-matter of a proceeding under a Special Act if an adverse order comes in the way of the success of the plaintiff, he must get it cleared before proceeding further. On the other hand if the order has been passed without jurisdiction, the same can be ignored as nullity, that is, non-existent in the eye of law and it is not necessary to set it aside and such a suit will be governed by Article 65 of the Act. So far as the ratio laid down in the aforesaid judgment is concerned, I am of the opinion that the same is not applicable to the facts of the present case because in that case the Supreme Court has observed that when the adverse order under a Special Act is to be challenged provisions of Article 100 will be attracted. So far as the instant case is concerned, no order is recorded under any Special Act. Therefore, the judgment relied upon by Ms. Talati is of no avail or assistance to the case of the defendant.

11. In the case of State of Punjab (supra), it was held by the Supreme Court that a suit for declaration that an order of dismissal or termination from service passed against the dismissed employee is wrongful, illegal or ultra vires is governed by Article 113 of the Act. It was also observed that it cannot be said that there is no limitation for instituting the suit for declaration by a dismissed or discharged employee on the ground that the dismissal or discharge was void or inoperative. If a suit is not covered by any of the specific articles prescribing a period of limitation, it must fall within the residuary article. The purpose of

the residuary article is to provide for cases which can not be covered by any other provision in the Act. The party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for. Admittedly, as per the residuary Article 113 of the Act, the period of limitation is three years. Therefore, in my view, the ratio laid down by the Supreme Court in the case of State of Punjab (supra) shall apply with all force to the facts of the present case. It is, therefore, held that the suit filed by the plaintiff within a year and about 3 months is obviously within the time and there is no error of law or facts committed by the lower appellate court in saying that Article 113 of the Act is attracted in the facts and circumstances of the case. The first substantial question of law formulated by this Court in this Second Appeal is, therefore, answered against the defendant and held that Article 100 of the Act is not applicable but Article 113 of the Act is applicable.

12. After having held that the suit filed by the plaintiff was within the period of limitation, now the next question which falls for determination of this Court is as to whether Civil Court was justified in interfering with the finding in the disciplinary proceedings. In this connection, this Court has formulated three substantial questions of law which are inter-connected which I propose to deal with simultaneously since they are relating to the scope of the Civil Court's jurisdiction in a departmental inquiry by way of judicial review.

13. In the case of Kuldeep Singh v. Commissioner of Police, (1999) 2 SCC 10, the Supreme Court while laying down lucid principle relating to the scope of judicial review in deartmental inquiry made following weighty observations which read thus:

> "6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The

power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were adverse or made at the dictates of the superior authority.

7. In Nand Kishore Prasad v. State of Bihar AIR 1978 SC 1277 it was held that the disciplinary proceedings before a domestic tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the enquiry officer would be perverse.

8. The findings recorded in a domestic enquiry can be characterized as perverse if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by this Court in State of A.P. v. Rama Rao, AIR 1963 SC 1723, in which the question was whether the High Court under Article 226 could interfere with the findings recorded at the departmental enquiry. This decision was followed in Central Bank of India Limited v. Prakash Chand Jain, AIR 1969 SC 983 and Bharat Iron Works v. Bhagubhai Balubhai Patel, AIR 1976 SC 98. In Rajinder Kumar Kindra v. Delhi Admn. AIR 1984 SC 1805 it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on

no legal evidence and the findings are its mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

Keeping in forefront the aforesaid principles, it cannot be gainsaid that the Civil Court while deciding suit filed under section 9 of the Code has to follow the same principles wherein the relief claimed was relating to departmental inquiry and the challenge to the finding recorded therein.

14. In light of the above, if we examine the case, the charge against the plaintiff was that on January 13, 1972 at about 3 P.M. at Dhari he was found in a suspicious condition in the company of one Bai Khatija, a married woman of one Ismail Maherali, in the house of one Suthar Haribhai Vashram situated in Navi Vasahat. It was a news item published in "Phool Chhab", a daily news paper. On the basis of this news item, the plaintiff was charge-sheeted.

15. On perusal of the report of the inquiry officer dated Nil it is seen that one Kalu Tamachi, an Ex-unarmed police head constable (policeman) has conspired against the plaintiff and this was the finding recorded by the inquiry officer and on this finding the inquiry officer exonerated the plaintiff. The DSP did not agree with the said report and he being the disciplinary authority vide order dated May 25, 1972 differed with the finding recorded by the inquiry officer and reversed the finding recorded by the inquiry officer and recorded adverse

finding and thereby held the plaintiff guilty of the charge levelled against him. On having perusal of the said order of the DSP there is no manner of doubt that it based on surmises, assumptions and conjectures. It may be appreciated that it was not the case of the department that the plaintiff was having any illicit connection with the woman Bai Khatija. The plaintiff was simply found with the said woman in a room closed from outside. In my view, that does not mean that the plaintiff was carrying on nefarious or illicit relation with her. There was nothing on record to show that the conduct of the plaintiff would suggest that the plaintiff was living in the company of that lady and carrying on nefarious activity with that woman which would bring slur on the department and much less the plaintiff acted in a manner not befitting to a police personnel. In short, there was no evidence against the plaintiff and, therefore, the finding recorded by the disciplinary authority can be said to be perverse and it can be said that such a finding could not be reached by an ordinary prudent man. On having further perusal it could be further assembled that Bai Khatija herself was an important witness but she was not examined by the department and regarding non-examination of this witness the disciplinary authority has observed that if at all the plaintiff wanted to prove his innocence he ought to have examined her. It was further observed that though the plaintiff wanted to suggest that the witnesses who had deposed against him were in inimical terms with him but he has not produced any evidence to prove the enmity. It was the say of the plaintiff that as a police officer he had taken certain actions against certain persons and raided their residence. In this regard, the disciplinary authority had observed that it was the duty of the plaintiff to have produced the material relating to those cases in order to show that the witnesses were inimical to him and it was for the plaintiff to prove his innocence rather than the department to prove him guilty. According to me, this approach in a disciplinary proceeding is unjustifiable. It may also be appreciated that during the preliminary inquiry statement of Bai Khatija was also recorded and in her statement she has stated that she was involved by Kalu Tamachi because Kalu Tamachi was in inimical terms with her. In view of the aforesaid observations made by the disciplinary authority it cannot be gainsaid that the whole approach was unjustified and not as per service jurisprudence. There is nothing on record to raise an accusing finger against the plaintiff relating to his conduct or character.

16. In view of the discussion made hereinabove, I am

of the opinion that both the courts below were right in observing that the order dated July 7, 1972 passed by DSP, Amreli dismissing the plaintiff from service and subsequent orders recorded by appellate authority as well as the revision authority confirming the said order were illegal, null and void.

17. The impugned order dated July 7, 1972 also can be said to be null, void and illegal since before recording contrary finding than one recorded by the inquiry officer no show cause notice and opportunity of hearing was given to the plaintiff before reversing the finding of the inquiry officer. At the risk of repetition be it stated that by the first order recorded by inquiry officer, that is, Dy.SP, the plaintiff was exonerated from the charge levelled against him vide order dated Nil. The disciplinary authority did not agree with the said finding. Therefore, he recorded the contrary finding holding the plaintiff guilty vide order dated May 25, 1972 by appreciating the evidence recorded by the inquiry officer and additional evidence as well. Thereafter he had issued show cause notice to the plaintiff to show cause why he should not be removed from the service since he was held guilty of the charge levelled against him. On perusal of the said order it could be assembled that the caption of the said order was "appreciation of the additional evidence and show cause notice". In the said order the disciplinary authority has recorded the finding holding the plaintiff guilty without giving notice and without affording him opportunity of hearing and straightaway he issued notice for imposition of major penalty of removal from service.

18. So far as the latest civil law on service jurisprudence in a departmental proceeding is concerned, in the case of Yoginath D. Bagde v. State of Maharashtra, (1999) 7 SCC 739, the Supreme Court has clearly and categorically observed that requirement of affording opportunity of hearing as laid down by the Supreme Court in the judgment rendered in the case of Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84, being in consonance with Article 311 (2) and being a constitutional right to be heard, has to be read into a rule which does not make specific provision to this effect and the disciplinary authority before forming its final opinion, has to convey to charged employee its tentative reasons for disagreeing with the findings of the enquiry officer and to issue show cause notice. In paragraph 31 of the said judgment the Supreme Court has made following weighty observations which read as under:

"31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311 (2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution."

19. In view of the aforesaid clear pronouncement of the Supreme Court and on the facts and in the circumstances emerging from the record of the case at the risk of repetition, I may state that the disciplinary authority while recording the reasons by which he disagreed with the finding arrived at by the enquiry

officer reversed the finding, did not issue show cause notice to the plaintiff and as per the order dated May 25, 1972 straightway final show cause notice was issued to the plaintiff as to why he should not be removed from the service since charge was proved against him. In the said order the disciplinary authority has appreciated the additional evidence as well. Therefore, obviously, opportunity to defend was not given to the plaintiff. Seen in the above context also the finding arrived at by the disciplinary authority in the said enquiry can be vitiated and can be declared as illegal, null and void.

20. In view of the aforesaid discussion, there is no manner of doubt that the three substantial questions of law formulated by this Court relating to departmental enquiry are answered against the defendant and I hold that both the courts below were right in law and facts in declaring that all the orders passed against the plaintiff dismissing him from service were perverse, illegal, null and void and both the courts below have not committed any error either of law or facts and declaring the same accordingly. On the facts and in the circumstances of the case no other conclusion was permissible and possible except the one reached by both the courts below and the same cannot be disturbed in this Second Appeal and, therefore, no interference with the said finding is warranted but, on the contrary it requires affirmation by this Court.

21. For the foregoing reasons, the appeal being devoid of any merits fails and accordingly is dismissed, however, with no order as to costs.

(A. M. Kapadia, J.)

(karan)